IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1973 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

KAMANI FORWARD HIGH SCHOOL - Petitioner
Versus
HASUMATIBEN N DOSHI - Respondent

==========

Appearance :
MR PJ KANABAR for Petitioner.
RULE SERVED for Respondent No. 1.
MR MUKESH H RATHOD for Respondent No. 1.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/01/2006
ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the impugned order dated 02.11.1985 passed by the Controlling Authority, Amreli in Application No. 2/85 under the Payment of Gratuity Act, 1972 and also the order dated 23.6.1986 passed in Appeal No. 1 of 1986 by the Appellate Authority, Rajkot.

2.The question arose in this petition is as to whether primary school teacher is an employee within the definition of section 2 (e) of the Payment of Gratuity Act, 1972 or her services are governed by the Primary Education Act, read with Schedule F thereto.

3.The brief facts giving rise to the present petition are that the respondent – original

applicant filed Application No. 2/1985 before the Controlling Authority, Amreli under the provisions of the Act as well as the Rules claiming that she was entitled to the payment of gratuity of an amount of Rs. 10,692/-. It was the case of the respondent that she has retired on superannuation on 29.02.1985 and considering her last pay, she was entitled to such amount of gratuity.

4.The said application was resisted by the petitioner contending that the petitioner was not liable to pay any gratuity amount to the respondent since it could not be said to be establishment and, therefore, there was no question of paying any gratuity to the respondent. It was also contended that the petitioner was a private Trust imparting primary education and the respondent was serving as a teacher and that her services were governed by the Bombay Primary Education Act,

1948 and since there was no agreement to pay any gratuity, there was no question of making any payment of gratuity.

5.The Controlling Authority, Amreli decided the said application on 02.11.1985 holding that the petitioner was liable to pay Rs.10,692/- as gratuity amount to the respondent.

6.Being aggrieved by the said order, the petitioner preferred an appeal under the Payment of Gratuity (Gujarat) Rules, 1972 before Appellate Authority constituted under the Act. The Appellate Authority decided the said Appeal No. 1 of 1986 preferred by the petitioner by its order dated 23.01.1986 and the appeal was accordingly dismissed.

7.It is this order of the Controlling Authority as well as the Appellate Authority which is under challenge in the present petition.

8.The petition was admitted and rule was issued on 01.07.1987. Interim relief was also granted by the Court.

9.Initially, the petition was dismissed on 23.06.2000 on the ground that the petitioner's advocate has no instruction in the matter. A request was made to dispose of the said petition by passing appropriate order reserving liberty to revive the petition in case of difficulty in future. Subsequently, M.C.A. No. 477 of 2004 was filed for revival of the petition and accordingly, the present petition was revived by this Court vide its order dated 31.08.2004.

10.Mr. P.J. Kanabar, learned advocate appearing for the petitioner has submitted that the very question came up before Full Bench of this Court in *Shantiben L. Christian v.*

Administrative Officer, 2001 (2) GLH 389 wherein this Court had an occasion to consider the definition of the word "employee" defined under Section 2 (e) of the Act. While answering the said question, the Full Bench of this Court has said that primary teacher serving under the Ahmedabad Municipal School Board is not an employee as per the definition as the word "employee" is extended only to a limited class and work of a teacher cannot be said to be supervisory, technical or clerical, hence, would not come within the definition of "employee" for the purpose of the Act.

11.The judgment delivered by the Full Bench of this Court in Shantiben's case (supra) was challenged before the Supreme Court by filing Civil Appeal No.6369 of 2001 in the case of *Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and others, 2004 AIR*

SCW 356. The Supreme Court while interpreting Section 2 (e) of the Act has said that teachers do not fall under the category of 'skilled','semi-skilled' or 'unskilled,' 'manual', 'supervisory', 'technical' or 'clerical' employees and it also cannot be held that a teacher was employed in 'managerial' or 'administrative' capacity. Therefore, the teachers are not entitled to benefit of gratuity under the Act. Therefore, the judgment delivered by Full Bench of this Court in Shantiben's case (supra) has been affirmed by the Hon'ble Supreme Court.

12.Again similar question arose before Full Bench of this court in the case of *Principal, Shri Jivkor Vanita Vishram v. Savita Saymon Parmar and another, 2004 (2) GLR 1593*. The Full Bench of this Court while interpreting Section 2(e) of the Act has said that although the

notification of 1997 makes the Act applicable to Educational Institutions, teacher not being an 'employee' under the Act, is not entitled to benefits of gratuity and the position stated in Shantiben's case (supra) approved by the Supreme Court in Ahmedabad Pvt. Primary Teachers Association's case (supra) is reiterated.

13.In view of the above discussion, the question as to whether a primary teacher is an 'employee' under the provisions of section 2 (e) of the Act is no more resintegra in view of the aforesaid two decisions of the Full Bench of this Court and the decision of the Supreme Court.

14.Applying the principle laid down by the Full Bench of this Court which is affirmed by the Supreme Court that primary teachers are not employees within the meaning and

definition of section 2 (e) of the Act and therefore they are not entitled to the benefit of gratuity under the Act. Looking to the facts of this case, the Court is of the view that the impugned orders passed by the authorities below are required to be quashed and set aside and the present petition is required to be allowed. Accordingly, the petition is allowed. Impugned orders are quashed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

S*avariya*